

June 11, 1999

Remembering What is at Stake

## Nuclear Secrets and Civil Rights

The “Cox Committee” — a bipartisan, select committee of the United States House of Representatives composed of experts in national security, intelligence, and international relations — found that the People’s Republic of China stole information on our most advanced thermonuclear weapons and is exploiting that information in the development of its own weapons.

When the Attorney General of the United States was asked about the Department of Justice’s failures to authorize a wiretap on a scientist at the Los Alamos Laboratory who was suspected of passing nuclear secrets to the Chinese, she said the following in a written statement of May 24, 1999:

“I take very seriously the Department’s responsibility to protect the national security. Additionally, I have the awesome responsibility to determine whether to authorize government intrusion into the lives of American citizens. But the Justice Department has not — nor will it — authorize such intrusions when, as in this case, the standards of the Constitution and the Foreign Intelligence Surveillance Act (FISA) have not been met.”

This statement is revealing — even apart from the tone which makes it sound as if it were issued on the letterhead of the American Civil Liberties Union. The Attorney General of the United States is, according to the *United States Government Manual*, the “head of the Department of Justice and chief law enforcement officer of the Federal Government.” As such, she shouldn’t sound like legal counsel for the accused, but like counsel for the United States.

Re-read Ms. Reno’s statement: Notice that she takes “very seriously” the responsibility of her Department to protect the nation’s security, but that she, herself, has the personal responsibility to decide whether to intrude into a citizen’s life. This latter responsibility, unlike the Department’s responsibility to protect all Americans, is said to be “awesome.” One wonders if the Attorney General fully understands what is at stake.

The “Cox Committee” reported that the People’s Republic of China obtained information on at least seven U.S. nuclear warheads, including the W-87, a relatively small warhead developed for use on missiles that carry multiple warheads. The warhead for a W-87 is about 5.7 feet long and about 1.8 feet in diameter; it is small enough to fit into a Volkswagen.

Notwithstanding its small size, the W-87 carries the explosive power of 300,000 tons of TNT (300 kilotons). A W-87 is 24 times more powerful than the bomb that fell on Hiroshima. Still, a W-87 is only in the mid-range of U.S. thermonuclear devices; the B-53 warhead is 30 times more powerful than the W-87.

If a W-87 warhead were exploded at the front door of the Department of Justice at 10<sup>th</sup> Street and Constitution Avenue there would be an instantaneous and highly deleterious effect on civil rights, as well as "unauthorized intrusions" into the lives of hundreds of thousands of American citizens.

The United States Department of Justice building and all of its occupants would be vaporized, as would the FBI building and all of its occupants.

The White House, the United States Capitol, the Supreme Court building, and all of their occupants would disappear. The local courts would close forever.

The Smithsonian Institution with its treasures and its visitors would be gone.

The monuments to American statesmen and warriors would vanish.

The original texts of the Constitution, the Bill of Rights, and the Declaration of Independence would cease to exist.

The world's greatest library would evaporate.

Within 2.5 miles of the bomb's blast, virtually every building would be destroyed; within 4.5 miles of the blast, virtually every person would die. The Hiroshima blast killed 140,000 persons and destroyed or damaged 70,000 buildings — and the W-87 is 24 times more powerful than the bomb that fell in 1945. Washington, D.C., in 1999 is a bigger and busier city than Hiroshima in 1945. And, of course, radiation from a nuclear blast can kill long after the flash.

These are the kinds of facts that we might expect an Attorney General to mention in a formal statement on nuclear espionage and the law. Ms. Reno's statement, on the other hand, seems wholly inadequate, even though it is a nice paean to selected individual liberties.

"[U]nless Government safeguards its own capacity to function and to preserve the security of its people, society itself could become so disordered that all rights and liberties would be endangered," said the Supreme Court in a highly relevant decision, *United States v. U.S. District Court*, 407 U.S. 297, 312 (1972). The security of the American people and their institutions is a civil right of infinite magnitude, but Ms. Reno said nothing on these points.

Either the Department of Justice needs to be restaffed or the law needs to be reformed (or both), but the failure to protect America's most dangerous secrets must not be repeated.

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Source: Report of the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, H. Rept. No. 105-851, 105<sup>th</sup> Cong., 2d Sess. (declassified in part May 25, 1999), vol. I, "Overview" at ii-iii & "Chapter 2" at 76-79.